

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY A. SYKES,

Plaintiff,

v.

AVENAL STATE PRISON, et al.,

Defendants.

Case No.: 1:23-cv-00966-JLT-SKO (PC)

**ORDER GRANTING PLAINTIFF
NINETY DAYS TO IDENTIFY
DEFENDANT JOHN DOE**

Plaintiff Troy A. Sykes is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. section 1983.

I. INTRODUCTION

Following screening, this action proceeds on Plaintiff's Eighth Amendment conditions of confinement claim against Defendant John Doe, Avenal State Prison (ASP) Food Services Head Manager. (*See* Docs. 14 & 15.)

II. DISCUSSION

Service on Doe Defendants

The United States Marshal cannot serve Doe defendants. Plaintiff will be required to identify John Doe with enough information to locate the defendant for service of process. Plaintiff will be given the “opportunity through discovery to identify the unknown (Doe) defendants.” *Crowley v. Bannister*, 734 F.3d 967, 978 (9th Cir. 2013).

1 Although Plaintiff has stated a plausible claim against John Doe, the ASP food services
2 manager, the Court will not require service on this defendant at this time. The Ninth Circuit has
3 held that where identity of a defendant is unknown prior to the filing of a complaint, the plaintiff
4 should be given an opportunity through discovery to identify unknown defendants unless it is
5 clear that discovery would not uncover the identities, or that the complaint would be dismissed on
6 other grounds. *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (citing *Gillespie v.*
7 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). Here, discovery may uncover the identity of John
8 Doe, and Plaintiff's first amended complaint may not be dismissed on other grounds. Thus,
9 Plaintiff should be afforded an opportunity to learn the identity of John Doe through limited
10 discovery.

11 If Plaintiff is able to identify John Doe by an actual name, he may submit a notice of
12 substitution that provides the actual name for Defendant John Doe and ask the Court to substitute
13 the individual's name for the previous Doe defendant designation. If Plaintiff is unable to submit
14 a notice of substitution at this time, limited discovery is warranted.

15 Service of Subpoenas on Doe Defendants

16 Rule 45 of the Federal Rules of Civil Procedure addresses subpoenas. Plaintiff is advised
17 the Court's authorization of a subpoena duces tecum requested by an *in forma pauperis* plaintiff
18 is subject to limitations. Because personal service of a subpoena duces tecum is required (Fed. R.
19 Civ. P. 45(b)), "[d]irecting the Marshal's Office to expend its resources personally serving a
20 subpoena is not taken lightly by the court. *Austin v. Winett*, No. 1:04-cv-05104-DLB PC, 2008
21 WL 5213414, *1 (E.D. Cal. Dec. 12, 2008); 28 U.S.C § 1915(d). Limitations include the
22 relevance of the information sought, as well as the burden and expense to the non-party in
23 providing the requested information. Fed. R. Civ. P. 26, 45.

24 A motion for issuance of a subpoena duces tecum should be supported by clear
25 identification of the documents sought and a showing that the records are obtainable only through
26 the identified third party. *See, e.g., Davis v. Ramen*, No. 1:06-cv-01216-AWI-SKO (PC), 2010
27 WL 1948560, *1 (E.D. Cal. May 11, 2010); *Williams v. Adams*, No. 1:05-cv-00124-AWI-SMS
28 (PC), 2010 WL 148703, *1 (E.D. Cal. Jan. 14, 2010). The "Federal Rules of Civil Procedure were

1 not intended to burden a non-party with a duty to suffer excessive or unusual expenses in order to
2 comply with a subpoena duces tecum.” *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa. 1991).
3 Non-parties are “entitled to have the benefit of the Court’s vigilance” in considering these factors.
4 *Id.*

5 III. CONCLUSION AND ORDER

6 Accordingly, the Court **GRANTS Plaintiff ninety (90) days** in which to discover the
7 name of Defendant John Doe, through subpoena or otherwise, and to substitute this defendant’s
8 actual name by filing a “notice of substitution.” *See Wakefield*, 177 F.3d at 1163. If, within 90
9 days, Plaintiff fails to file a notice of substitution that provides the actual name of John Doe, the
10 Court will recommend dismissal, without prejudice, of John Doe.

11 IT IS SO ORDERED.

12
13 Dated: **October 24, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE